

1 aggrieved party said that he was the only Psychiatry
2 Resident not promoted to the next level."

3 A. I think she did not phrase the question
4 properly here, the question that was asked.

5 Q. I see. Did you tell her of the comments
6 that you have attributed to Dr. Mushrush that were
7 discriminatory in nature?

8 A. Yes.

9 Q. And she just failed to put them in here?

10 A. Yes, probably.

11 Q. Do they appear anywhere in this document?

12 A. Not on this document.

13 Q. And that's just because Ms. Velez was
14 negligent in including them?

15 A. I don't know.

16 Q. But they were communicated to her, and it is
17 your testimony they just don't appear anywhere here,
18 correct?

19 A. Not on this document.

20 Q. Now, what triggered all this was a letter
21 dated May 28, 2002, is that correct?

22 A. Yes.

23 MR. JOY: I'd like to have the document
24 marked, this one as Exhibit 4, which I will identify

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1 Q. Now, did you have any follow-up
2 communication with Dr. McCarley regarding the
3 completion of your program?

4 A. Yes, I complained to Dr. McCarley also when
5 I got this letter of May 2002.

6 Q. Okay. Now, I am going to ask you in a
7 moment about further communication with Dr. McCarley
8 following, following receipt of that letter, but I
9 do want to go back to Exhibit 7 where it says you,
10 where there is a reference to your having difficulty
11 getting along with women, nurses included. Did you
12 challenge or ask about that statement?

13 A. Yes, I did.

14 Q. And were you provided information?

15 A. No, I was not provided information.

16 Q. Did you ever have difficulty?

17 A. No.

18 Q. Never in your four years in the program did
19 you have difficulty with a woman?

20 A. Not difficulty, but I had difficulty with
21 supervisors, definitely, but not based on gender,
22 and I told Dr. Mushrush that Dr. Festin, who is a
23 woman, she supervised me for more than five months,
24 and that she never complained and she gave me very

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EXHIBITS 11 - 17

UNITED STATES DISTRICT COURT

District of Massachusetts

RAJENDRA BADGAIYAN, M.D.,

Plaintiff

Civil Action

v.

No. 04-12031 PBS

ANTHONY J. PRINCIPI, Secretary

Department of Veterans Affairs, et al.,

Defendants

CONTINUED DEPOSITION of RAJENDRA D. BADGAIYAN, M.D.

Thursday, July 6, 2006

Morgan, Brown & Joy, LLP

200 State Street

Boston, Massachusetts 02109

9:20 a.m. to 1:11 p.m.

----- CAROL A. CARUSO, CSR -----

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1 source of your knowledge, who told you or what
2 documents made this procedure that you are tell me
3 about?

4 A. I have not seen any document that says that
5 Dr. Mushrush is authorized to put a resident on
6 probation without any committee's approval.

7 Q. Have you seen a document that says she does
8 not have authority to do so?

9 A. I have seen a document that says who can put
10 a resident on probation.

11 Q. Where did you see that document?

12 A. That's in Harvard Medical School Guidelines.

13 Q. When did you review the Harvard Medical
14 School Guidelines containing such a statement?

15 A. I don't remember when.

16 Q. Is it your testimony you are certain that
17 there is such a provision in the Harvard Medical
18 School Guidelines?

19 A. Yes, yes.

20 Q. And that provision does not grant the
21 authority to Dr. Mushrush, the director of the
22 program -- you have to let me finish my question
23 before you answer -- and it's your testimony that
24 those guidelines expressly prevent Dr. Mushrush from

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1 dated October 22, 2004, and this is from Susan
2 Cornacchio, Board counsel of the Board of
3 Registration in Medicine. Do you recall receiving
4 this letter on or about its date?

5 A. Yes.

6 Q. And it says, "Dear Dr. Badgaiyan, As you may
7 recall, at its June 16, 2004 meeting, the Licensing
8 Committee, a subcommittee of the Board of
9 Registration in Medicine, met with you to discuss
10 the information contained in your full license
11 application. The Licensing Committee deferred
12 further consideration of this application until you
13 had undergone a Board approved psychiatric
14 evaluation and met with Dr. Luis Sanchez, Director
15 of Physician Health Services, to determine your
16 suitability for a Behavioral Health Monitoring
17 Contract.

18 "On August 4, 2004, you emailed me and
19 indicated you had begun meeting with the Board
20 approved psychiatrist, Dr. Donald Meyer." Do you
21 recall sending such an e-mail?

22 A. Yes.

23 Q. "You stated that Dr. Meyer would not be able
24 to complete his evaluation until he had met with two

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1 psychiatrists involved with your residency training
2 at the Boston V.A. Hospital. You added that the
3 V.A. Hospital attorney had informed Dr. Meyer that
4 he could not speak to these physicians because of a
5 possible conflict of interest and that you were
6 attempting to contact attorney Paul Merry to resolve
7 this issue. However, Attorney Merry was on vacation
8 and Dr. Meyer was scheduled to begin a three week
9 vacation within the next few days.

10 "You indicated that further delay in the
11 processing of your application could result in the
12 loss of your fellowship and asked if the Committee
13 would accept an interim report from Dr. Meyer
14 consider a limited license application so that you
15 could begin your training as soon as possible. You
16 were advised to submit a change of program
17 application as well as the previously requested
18 information so that this matter could be presented
19 to the Licensing Committee in a timely manner." Do
20 you recall that?

21 A. Yes.

22 Q. And did you in fact ask the Committee if it
23 would accept an interim report of Dr. Meyer?

24 A. Yes.

1 Q. As a way to support a Limited License
2 Application so you could begin training as soon as
3 possible?

4 A. Yes.

5 Q. And that's training in the Nuclear Medicine
6 Training Program?

7 A. Yes.

8 Q. And that's the limited license that you
9 testified earlier today was not granted?

10 A. Yes.

11 Q. Now, the delay in August is in part
12 occasioned by vacations, is that right?

13 A. No, he sent me an interim report before
14 leaving on vacation.

15 Q. I see. But in terms of the Full License
16 Application, the vacation schedule in August is
17 delaying the further completion of that, correct?

18 A. Correct.

19 Q. Now, the delay that you assigned to
20 Dr. Mushrush in getting information into the Board
21 of Registration, what was the period of delay that
22 you believe was caused by her?

23 A. Yeah, when I submitted my application for
24 limited license, she took more than a month, I think

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1 approximately two months before she sent the
2 application back to the Board.

3 Q. Okay. So her delay that you are speaking
4 about doesn't relate to your Full License
5 Application?

6 A. Full License Application also she sent --

7 Q. I didn't hear your answer.

8 A. Yes, both.

9 Q. It does or does not?

10 A. It does, Full License Application also she
11 did not send the application to the Board I think
12 for three weeks or so.

13 Q. And what application was she supposed to
14 send to the Board respecting your full license?

15 A. There was one form, the Graduate Training
16 Verification Form, I think that is how it started,
17 and where she had to mention if I was in the
18 training, yeah, so that application, that part
19 Dr. Mushrush had to fill in and send, send to me in
20 a sealed envelope. She did not do it for more than
21 three weeks, I think, for about a month.

22 Q. When was that, during what period of time?

23 A. That was approximately February, March,
24 February 2004, I think.

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1 Q. 2004?

2 A. Yeah.

3 Q. Okay, but that, that didn't delay, once it
4 was received, that didn't delay the committee's
5 processing of the application?

6 A. I don't know how they go, but.

7 Q. But it was in by March of 2004 is your
8 testimony?

9 A. Yes, it's in at that time, yes.

10 Q. Now, if you look at the second page of this
11 letter of October 22, 2004, it says, "In a September
12 7, 2004 e-mail, you informed me that your former
13 Program Director had not signed the change of
14 program application and asked that the Committee
15 would instead consider your full license
16 application. In my email response," and let me stop
17 there, you are talking about Dr. Mushrush?

18 A. Yes.

19 Q. It goes on to say, "In my email response, I
20 advised you that you had filled out a change of
21 program application to expedite the application
22 process during the summer months when your attorney
23 and Dr. Meyer were on vacation. Since you have not
24 been able to complete your change of program

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1 application, I informed you that you needed to go
2 forward with your full license application and
3 complete the evaluations by Dr. Meyer and
4 Dr. Sanchez. You replied that you had completed
5 both of these evaluations and were still interested
6 in applying for the change of program license and
7 asked whether the Committee would consider accepting
8 this application without the Program Director's
9 signature.

10 "On September 21, 2004, the Board
11 received your completed change of program
12 application. The Board has not received Dr. Meyer's
13 finalized evaluation and has not received a
14 recommendation from Dr. Sanchez regarding your
15 suitability for monitoring the contract.

16 "Please be advised that the materials in
17 your March 2004 full license application may be
18 outdated. Please contact me and let me know whether
19 you choose to proceed with the application process."

20 Is that all accurate?

21 A. Yes.

22 Q. And did you, by the way, submit a Change of
23 Program Application?

24 A. I submit the program, the change of -- what

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1 is it -- Change of Program Application some time in
2 July, I think, and what she is mentioning the
3 application was not complete, because the part
4 Dr. Mushrush had to complete was not complete, and
5 Dr. Mushrush, instead of sending the form to me, she
6 sent it to the Board, and at that time the Board
7 thought my application was complete.

8 Q. And do you remember when that was?

9 A. Here it says September 21.

10 Q. So, and when had you asked her to send it
11 in?

12 A. In July.

13 Q. Do you remember?

14 A. I think it's July.

15 MR. JOY: Okay. I have a document which
16 I would like to have marked as Exhibit 14. I will
17 identify it as a Change of Program Application,
18 Bates stamp BRM 0072. would you mark that.

19 (Document was marked Exhibit No. 14 for
20 identification.)

21 Q. I am going to ask you to take a look at the
22 document marked as Exhibit 14, I am going to ask if
23 this is the Change of Program Application that you
24 are referring to?

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1 A. Yes.

2 Q. And do you see the stamp on the top right
3 that says "Received September 20, 2004"?

4 A. Yes.

5 Q. Now, is there any indication of the date
6 when you filled this out -- and I assume where it
7 says Section A, that's your handwriting?

8 A. No, it's not my handwriting.

9 Q. Oh. Whose is it, do you know?

10 A. I think Dr. Mushrush's handwriting.

11 Q. Okay. Do you see at the bottom?

12 A. Yes.

13 Q. Actually, it says, "Section A: To be
14 completed by applicant."

15 A. Yes, I did, I sent my application, I think
16 it is on page 0074.

17 Q. Okay.

18 A. Yeah, that is my handwriting, and I sent
19 this form, but she chose, I don't know why, she
20 filled out the form herself and sent it to the
21 Board.

22 Q. So where it says, "Section A: To be
23 complete by applicant," that's not your handwriting?

24 A. That is not my handwriting.

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1 Q. Okay. You are certain of that?

2 A. Oh, yeah, 100 percent.

3 Q. So she filled this out?

4 A. Yeah.

5 Q. And if you look down below on this page,
6 which is 0072, it says, "Signature of Program
7 Director, Grace Mushrush," and that looks like her
8 signature, does it not?

9 A. Yes.

10 Q. And it says, opposite the printing of the
11 name Grace Mushrush, "Date: 8/12/04," do you see
12 that?

13 A. Yes.

14 Q. Do you have any reason to doubt that she
15 filled it out on 8/12/04?

16 A. I don't know when she filled it out, but she
17 did not send it to the Board.

18 Q. What did she do with it, do you know?

19 A. I don't know.

20 Q. If you look at the second page, 0073, it
21 says, "Name: R.D. Badgaiyan," at the top, is that
22 your writing?

23 A. Yes, yes.

24 Q. Now, let's move to the next document, which

1 letter.

2 A. Yes.

3 Q. It says, "Because in addition to clinical
4 duties I will have to spend considerable amount of
5 time on research, the time spent in monitoring
6 (about 20 hours a month) will adversely affect my
7 research activities." Do you see that?

8 A. Yes.

9 Q. That's your writing, correct?

10 A. Yes.

11 Q. Now, at the second to last paragraph you
12 write, "I also request you to consider my full
13 license application which is on hold for a year.
14 Full license will allow me to work on psychiatric
15 patients for my research. Because I do not have a
16 full license I have not been able to start many of
17 my research projects on psychiatric population?

18 "I therefore request the members of the
19 board to waive the monitoring requirements and help
20 me advance my academic career."

21 So were you asking now for
22 reconsideration of the Full License Application and
23 for the Board to focus on that, rather than a
24 limited license?

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1 given while you were or as you completed the
2 rotation?

3 A. I was provided these documents in the first
4 year, and after that I was not.

5 Q. Okay.

6 A. But we are supposed to provide documents.

7 Q. Now, do you see the cover letter, "Enclosed
8 please find the evaluations of Dr. Rajendra D.
9 Badgaiyan which were requested by the Board for
10 Dr. Badgaiyan's full license." Do you see that?

11 A. Yes.

12 Q. And this was apparently signed by Dr. Grace
13 Mushrush, M.D.?

14 A. Yes.

15 Q. Now, you would agree with me, would you not,
16 that if the Board requested all evaluations of you,
17 that Dr. Mushrush had a duty to provide all such
18 evaluations, correct?

19 A. Yes.

20 Q. And do you know if she provided every
21 evaluation?

22 A. No, she did not.

23 Q. Do you know of any evaluations she left out?

24 A. Yes, there are many evaluations she has left

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1 Q. But you can't identify specifically --

2 A. Specifically, I know about Dr. Chang.

3 Q. Let's take a look at the evaluation Bates
4 stamp 0117, this was for the psychiatric rotation at
5 west Roxbury?

6 A. Service: Medicine.

7 Q. I'm sorry, Service: Medicine, and the
8 officer -- why is psych circled above the service?

9 A. Because I was a resident in psychiatric.

10 Q. Okay. This is Julian Seiffer?

11 A. Yes, yes.

12 Q. He was the director or the attending
13 physician?

14 A. No, he was attending physician.

15 Q. He has rated you average and below average
16 except for one area?

17 A. Yes.

18 Q. Now, if you would look at Bates stamp 0125,
19 this is an evaluation of trainee for the period
20 March 2001, the service was psychiatry at McLean,
21 and it appears to be signed by Sarah Bolton, M.D.,
22 do you see that?

23 A. Yes.

24 Q. And you, in the first day of your deposition

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1 testimony, told us that Sarah Bolton, to your
2 knowledge, never said anything that was negative or
3 derogatory about people of Indian national origin,
4 correct?

5 A. Yes.

6 Q. Dr. Mushrush did not play any role in this
7 evaluation, did she?

8 A. I do not know.

9 Q. Dr. Bolton is identifying your relations
10 with peers and with other staff as unsatisfactory in
11 this evaluation, correct?

12 A. Yes.

13 Q. And attitude as unsatisfactory?

14 A. Yes.

15 Q. The next document is the one that relates to
16 the rotation at McLean Hospital, and it is from
17 Dr. Bolton and Dr. Barreira to Dr. Mushrush,
18 correct?

19 A. Yes.

20 Q. Dated November 5, 2002?

21 A. Yes.

22 Q. And it says that you, "did not want to have
23 to do a rotation with us at all, and took several
24 days off that were not excused. While doing some

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1 complete work ups, there were times when I reviewed
2 his work after supervision and noted that he had not
3 made the recommended changes to his work up prior to
4 leaving for the day. He had significant problems
5 interacting with nursing staff and triage staff in
6 ways that interfered with good patient care." Do
7 you see all that?

8 A. Yes.

9 Q. And this was authored by Dr. Bolton and Paul
10 Barreira, M.D., correct?

11 A. Yes.

12 Q. Now, Dr. Barreira, to your knowledge, never
13 made any statements that were negative or derogatory
14 about people of Indian national origin, correct?

15 A. I don't know Dr. Barreira.

16 Q. So the answer is to your knowledge he did
17 not?

18 A. I don't know him at all.

19 Q. Do you know if Dr. Mushrush played any role
20 in the drafting of this document?

21 A. Not in drafting, but in content, yes,
22 because they are talking about several days of
23 absence. I was never absent without Dr. Mushrush's
24 permission, that is what we are supposed to take,

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1 and probably Dr. Mushrush did not tell them that I
2 was officially off at that time.

3 Q. My question was did she participate in the
4 drafting of this document?

5 A. I do not know.

6 Q. But you would agree with me, would you not,
7 that if the Board of Registration asked for all
8 evaluations, this is a document that Dr. Mushrush
9 should have included in the package of material,
10 correct?

11 A. She should -- I don't know, I have not seen
12 many of these evaluations, so I do not know if these
13 evaluations are true or not.

14 Q. Now, you were in a rotation with Dr. Osser,
15 correct?

16 A. Yes, it was a minor rotation.

17 Q. I'm sorry?

18 A. It was a minor rotation.

19 Q. And that was from July to August of 2001?

20 A. During that period, I used to meet him I
21 think once a week. I was supposed to do my
22 rotation.

23 Q. And if you look at Bates stamp 0131, down
24 the bottom just above his signature it says, "See

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1 over. Overall I rate him a 3, barely satisfactory."

2 And then above that under "Capabilities, Attitude

3 2.5," then he writes, "It was "1" at the start and

4 "4" at the end." See that?

5 A. Yes.

6 Q. And then he writes some handwritten pages,

7 two and a half pages, do you see that?

8 A. Yes.

9 Q. Have you read these?

10 A. Yes.

11 Q. When did you first read these?

12 A. In my attorney's office before

13 Dr. Mushrush's deposition.

14 Q. Okay. And you testified the first day that

15 you have no knowledge or information that Dr. Osser

16 made any comments that were derogatory toward people

17 of Indian national origin, correct?

18 A. Yes.

19 Q. You so testified, correct?

20 A. Yes.

21 Q. And as you sit here today, you are not

22 accusing Dr. Osser of having discriminatory

23 motivation in evaluating you, correct?

24 A. I am not saying that. It's not only making

1 the statement that matters, the thing that matters
2 really more is the way they look, it's the way they
3 interact with you, the way they neglect you, that
4 hurts more, and anybody who has gone through any
5 kind of discrimination knows that that hurts more
6 than one or two comments, and the kind of looks that
7 I used to get, the way that they used to disregard
8 me, that also is the kind of discrimination that
9 hurts more than just making comments.

10 Q. You are telling us that Dr. Osser engaged in
11 that kind of discrimination towards you?

12 A. I had that kind of attitude from many
13 doctors.

14 Q. My question, sir --

15 A. Yes.

16 Q. -- was with respect to Dr. Osser, not many
17 people --

18 A. Yes.

19 Q. -- but Dr. Osser. You are not telling us,
20 are you, that Dr. Osser discriminated against you
21 when he prepared this evaluation?

22 A. I do not know.

23 Q. You have no knowledge or information to
24 support such an accusation, correct?

1 A. Yes, I do not know.

2 Q. And you, of course, do not agree that your
3 attitude was poor when you began your rotation with
4 him, correct?

5 A. Yes.

6 Q. You agreed that it was poor?

7 A. No, I do not agree.

8 Q. In fact, you don't agree with any of the
9 negative comments of these evaluations, do you?

10 A. I agree with what most of my supervisors
11 have, the way that they have made on my attitude and
12 other aspects.

13 Q. How about the negative ones, do you agree
14 with those?

15 A. Which one specifically?

16 Q. Well, sure, we have gone over a few of the
17 negative ones, we can go back over them, you
18 remember them, they were only a few minutes ago, but
19 let's go back over them, and I'll ask you do you
20 agree with any of them, that is that you had a poor
21 attitude, that you had poor relations with peers,
22 that you had poor relations with staff?

23 A. No, that is not true, most of my supervisors
24 have given me 4 and 5 on attitude, most of my

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1 A. I never knew that they recommended it.

2 Q. So there was no reason to approach these
3 people about it?

4 A. Yes, yes.

5 Q. Do you think Dr. Mushrush is making this up?

6 A. I don't know.

7 MR. JOY: I have a document I would like
8 to have marked as Exhibit 16 and which I'll identify
9 as Evaluation Form Full License Applicant, Bates
10 stamp 0170 and 71. would you mark that, please.

11 (Document was marked Exhibit No. 16 for
12 identification.)

13 Q. Okay. This is a document that's been marked
14 as Exhibit 16, would you take a look at that,
15 please?

16 A. Yes.

17 Q. Now, if you would turn to the next page,
18 second page of this document under
19 "Recommendations," paragraph 7?

20 A. Yes.

21 Q. It says, "I recommend Rajendra Badgaiyan for
22 licensure in Massachusetts," and the box is checked,
23 do you see that?

24 A. Yes.

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1 Q. There was a box that said, "I do not
2 recommend for licensure," correct?

3 A. Yes.

4 Q. And that is not checked?

5 A. Yes.

6 Q. And this was signed by Grace Mushrush, M.D.,
7 correct?

8 A. Yes.

9 Q. On 4/23/04?

10 A. Yes.

11 Q. So Dr. Mushrush is recommending you for full
12 licensure in Massachusetts as of April 23, 2004,
13 correct?

14 A. Yes.

15 Q. And she is submitting this evaluation to the
16 Board of Registration in Medicine, is that correct?

17 A. Yes.

18 Q. Now, you, apart from -- well, let me ask
19 you, you have a claim in this case that you were
20 defamed, slandered. What false statements were made
21 about you and by whom?

22 A. Dr. Mushrush made a statement that none of
23 my supervisors like me, and I have a problem in all
24 my rotations, and I am not a good psychiatrist, and

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1 the patients to not like me, and she also told some
2 of my supervisors that I failed many rotations, and
3 then she called Dr. Scott Rauch in Mass. General
4 Hospital and told him, made derogatory remarks
5 against me without any provocation and without any
6 reason, there was no reason she should call somebody
7 at Mass. General Hospital.

8 Q. Okay. Let me just make sure I got the list
9 of those false statements down. None of my
10 supervisors like me was one false statement she
11 allegedly made, that you have problems in all your
12 rotations was the second, correct?

13 A. Yes.

14 Q. That you had failed many rotations?

15 A. Yes.

16 Q. And there were one or two others that you
17 identified before you identified calling Dr. Rauch
18 and making derogatory remarks?

19 A. Yes.

20 Q. What were those?

21 A. I don't know, I did not elaborate on that.

22 Q. What other, what were the two or three other
23 false statements besides the ones that I just
24 rostered to which you just previously testified to?